

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA
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4 NEUROGRAFIX, a California)
corporation; WASHINGTON)
5 RESEARCH FOUNDATION, a)
not-for-profit Washington)
6 corporation,)

7 Plaintiffs,)

8 vs.)

No. CV 10-1990 MRP(RZX)

9 SIEMENS MEDICAL SOLUTIONS)
USA, INC., a Delaware)
10 corporation; and SIEMENS)
AKTIENGESELLSCHAFT, a)
11 German corporation,)

12 Defendants.)
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15 DEPOSITION OF MICHAEL E. MOSELEY,
16 Ph.D., taken on behalf of the
17 Plaintiff, at 950 Page Mill Road,
18 Palo Alto, California, at 8:48 a.m.
19 before Janis L. Jennings, Certified
20 Shorthand Reporter No. 3942, CLR, CRP
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1 APPEARANCES:

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3 For the Plaintiffs:

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5 RUSS AUGUST & KABAT
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10 For the Defendants:

11 KIRKLAND & ELLIS LLP
12 BY: SEAN M. McELDOWNEY, ESQ.
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16 Also Present:

17 Michael Barber, Videographer
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1 A. One skilled in the art would think that a
2 conspicuity of 1.1 is a measure of something being
3 brighter than something else by 1.1.

4 Q. Okay. And 1.1 means that it is at least
10:18 5 10 percent greater than or 10 percent brighter than;
6 is that right?

7 MR. McELDOWNNEY: Objection. Vague.

8 THE WITNESS: One way -- is one way of
9 expressing that.

10:18 10 BY MR. FENSTER:

11 Q. If it were 1.2, would you understand that
12 to mean that the nerve has to be 20 percent greater
13 than the non-neural tissue?

14 A. It is one way to express it; right.

10:18 15 Q. Okay. Okay. So a conspicuity of 1.1
16 means that the nerve is at least 10 percent brighter
17 than the non-neural tissue; is that right?

18 MR. McELDOWNNEY: Objection. Vague.

19 THE WITNESS: I think we have been over
10:18 20 that. That's one way of -- that's one way of
21 expressing it.

22 BY MR. FENSTER:

23 Q. Okay. And would you agree that that
24 language that "the conspicuity of the nerve that is
10:19 25 at least 1.1 times that of the non-neural tissue"

1 Mischaracterizes and compound.

2 THE WITNESS: One skilled in the art would
3 understand conspicuity of 1.1 -- it is what it says,
4 that the nerve measurable, conspicuity, how it's
10:23 5 defined, is at least 1.1, or 10 percent more than a
6 non-neural tissue.

7 Now, that being said -- that being said,
8 one skilled in the art would expect that within this
9 context he or she would be told what is being
10:24 10 compared, what is being measured, how it's being
11 expressed or quantitated or calculated or assessed.
12 1.1 doesn't necessarily mean it's a ratio. I could
13 eyeball it, guesstimate it. I mean, there are
14 different ways of coming at 1.1.

10:25 15 MR. FENSTER: Let me mark as Exhibit 4
16 Exhibit C to your opening report.

17 (Whereupon, Moseley Exhibit 4 was
18 marked for identification.)

19 THE WITNESS: Okay. I see it.

10:25 20 BY MR. FENSTER:

21 Q. Do you recognize Exhibit 4?

22 A. Yes.

23 Q. And what is it?

24 A. Exhibit 4 is a series of regions of
10:25 25 interest or regions that I have marked for a

DEPOSITION OFFICER'S CERTIFICATE

STATE OF CALIFORNIA)
) ss.
COUNTY OF SANTA CLARA)

I, Janis L. Jennings, hereby certify:

I am a duly qualified Certified Shorthand
Reporter in the State of California, holder of
Certificate Number CSR 3942 issued by the Court
Reporters Board of California and which is in full
force and effect. (Fed. R. Civ. P. 28(a)).

I am authorized to administer oaths or
affirmations pursuant to California Code of Civil
Procedure, Section 2093(b) and prior to being
examined, the witness was first duly sworn by me.
(Fed. R. Civ. P. 28(a), 30(f)(1)).

I am not a relative or employee or attorney
or counsel of any of the parties, nor am I a
relative or employee of such attorney or counsel,
nor am I financially interested in this action.
(Fed. R. Civ. P. 28).

I am the deposition officer that
stenographically recorded the testimony in the
foregoing deposition and the foregoing transcript is
a true record of the testimony given by the witness.

1 (Fed. R. Civ. P. 30(f)(1)).

2 Before completion of the deposition, review
3 of the transcript [XX] was [] not requested.

4 If requested, any changes made by the deponent (and
5 provided to the reporter) during the period allowed,
6 are appended hereto. (Fed. R. Civ. P. 30(e)).

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8 Dated: February 9, 2011

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JANIS JENNINGS

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CSR 3942, CLR, CRR

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